by rule 36 could have been successfully effected by the Chief Police Officer exercising his powers under section 65.

I have carefully examined the wording of sub-sections (1) and (2) of section 65 in the light of this argument and I have arrived at the conclusion that section 87(1) can properly be used with section 65 to impose a valid rule, in this case rule 36.

I consider that the Governor in Council had power to prohibit the use of specified roads by vehicles of any specified class or description either generally or during particular hours.

It was further argued by Counsel for the appellant that the relevant portion of the rule in question was invalid because it conflicted with the so-called "blanket rule" referred to in *Rex v. Koh Hai Sui*[2]. With this argument I am unable to agree.

In the case referred to, the relevant order (the Prohibition of Imports Order, 1948), purported to prohibit all imports save under licence. In the present case the rule purports to prohibit the use of specified roads (namely public roads or streets within the Municipal limits) by vehicles of a specified class (namely, bullock carts). It will be sufficient if I say that, in the view I take, the principles enunciated in *Rex v. Koh Hai Sui*[2], *supra* and *Liversidge's case*[3] have no application to the present case.

Finally it was contended that the word "specified" used in section 65 meant that the roads must be named. In my opinion roads are sufficently "specified" by reference to "public roads or streets within the Municipal limits".

I turn now to the question of sentence. The appellant was fined the sum of $10 and it was contended that this, in all the circumstances, was excessive.

By section 82(1) of the Municipal Ordinance a tax is imposed on all carts ... kept or habitually used within the Municipality at rates not exceeding those prescribed by the Governor in Council. For every cart drawn by any description of horse or cattle a fee of $38 has been prescribed, (vide G. N. No. S. 503/48).

The appellant had paid this tax of $38 for the year ending 31st December, 1953, together with a registration fee of $3 and a notice fee of $4.50 making a total of $45.50.

The anomalous position thus arises of the appellant residing in the Municipal area, housing and habitually using a bullock cart within that area, paying a licence fee and receiving a licence from the City Council and yet being entirely prohibited from using his bullock cart within the Municpal limits. This is a matter which should receive the attention of the appropriate authorities.

Although there was evidence that "registered owners are told verbally that they cannot use the cart within the Municipal limits", Crown Counsel agreed that very considerable confusion must exist as to the position and in the circumstances did not seek to support the sentence.

I consider it would have been proper for the Magistrate, although finding, in my opinion rightly so, that the charge had been proved, without proceeding to conviction to have dismissed the charge against the appellant after administering such caution as he thought fit.

I propose to adopt this course.

The conviction and sentence will therefore be quashed and the charge dismissed and the appellant is warned of the consequences of any further infringement of the law.

Conviction and sentenced quashed.

Solicitors for the appellant: *L. Rayner & Co.*

TAN AH PEE v. YEO ENG SOON & ORS.

[A. C. J. (Murray-Aynsley C.J.) October 11, 1954]

[Singapore — District Court Appeal No. 12 of 1954]

Master and Servant — Labour Ordinance (Cap. 69), s. 19A — Paid holidays falling "within the period of his employment" — Casually employed labourers — Not entitled to paid holiday.

The respondents in this case were labourers casually employed as and when required. They claimed double wages for certain holidays on which they worked on the ground that they were entitled to a holiday with pay under s. 19A(1) of the Labour Ordinance. The relevant part of this sub-section reads: "Every labourer shall be entitled to a paid holiday at his ordinary rate of wages on such of the days specified in Schedule D to this Ordinance as fall within the period of his employment . . ." S. 19A(2) provides that where a labourer is required by his employer to work on any holiday to which he would otherwise be entitled he shall be entitled to double the ordinary rate of wages.

The labourers in this case were paid collectively when they did a job and were free to work or not when any job was offered. The appellant contended that the respondents were not engaged for a period of time and that s. 19A did not therefore apply to them. The Asst. Commissioner for Labour held that they were entitled to pay under that section.

Held: persons such as the respondents casually employed for particular jobs are not entitled to holidays with pay.

DISTRICT COURT APPEAL.

L. A. J. Smith for the appellant.

A. V. Winslow (Crown Counsel) *amicus curiae* for the respondents.

Murray-Aynsley C.J. : — This case gives rise to a considerable amount of difficulty. The workmen concerned are labourers casually employed as and when required. They are free to work or not when any job offers. They are paid collectively when they do a job, for which they seem to contract collectively.

The workmen claim double wages for certain holidays on which they worked. In order to be entitled to double wages it seems that they must be entitled to a holiday with pay under sub-section (1) of section 19A. For that the day must fall within a period of employment. It seems difficult to apply this term to persons casually employed for particular jobs. This is quite different from persons employed for a period of time but remunerated by piece-rates. "Within the period of his employment" is not the same as "during the time that he is employed". In the circumstances the appeal must be allowed.

Appeal allowed.

Solicitors for the appellant: *Donaldson & Burkinshaw.*

LOO WEE WAN v. REGINA

[C. C. A. (Murray-Aynsley C.J., Brown and Knight JJ.) December 13, 1954]

[Singapore — Criminal Appeal No. 18 of 1954]

Criminal law and procedure — Penal Code s. 477A — Falsification of accounts — What constitutes fraud — Retirement of Judge to chambers with jury in the absence of counsel and accused — Communication relating to qualification of juror and form of oath — Whether proceedings invalidated.

Fraud involves deceit and also a course of action on the part of the person deceived by which he suffers detriment but this detriment must be loss of money or other property. Where the object is to secure some advantage other than the covering up of past defalcations or the provision of an opportunity for further defalcations it is not an attempt to defraud.

A discussion in chambers with the jury but without counsel and accused which did not touch on the issues of the trial, while undesirable, did not invalidate the proceedings.

Case referred to:—

(1) *Regina v. Wines* (1953) 37 Cr. App. R. 197; (1953) 2 All E.R. 1497.

COURT OF CRIMINAL APPEAL.

L. Rayner for the appellant.

H. B. Livingstone, (Crown Counsel) for the respondent.

Murray-Aynsley C.J. (delivering the judgment of the Court) : — In this case the appellant was convicted of falsification of accounts. There was ample evidence to justify the conviction.

There are two matters only which call for comment.

As regards law, it is necessary to prove an intent to defraud. This is not the same as an intent to deceive. For this purpose the word "deceive" is used in its ordinary meaning and not with the technical signification associated with the common law action for deceit. Fraud involves deceit. It also involves a course of action on the part of the person deceived by which he suffers detriment but this detriment must be loss of money or other property. To set a booby trap by which a person is injured is deceit but not fraud, as is the case where a married man induces a woman to enter into a bigamous marriage. Normally in cases of falsification of accounts the intention is either to cover up past defalcations or to provide an opportunity for further defalcations. In either case the offence is committed. It is possible to commit the offence where there are no defalcations, according to the recent English case of *R. v. Wines*[1]. But it is not, in our opinion, an attempt to defraud where the object is to secure some other advantage. We think that in the cases under the Indian Penal Code the Bombay cases are to be preferred to those of Allahabad and Calcutta (see *Ratanlal,* 17th Ed. p. 1178). We do not think that the summing up in this case was entirely clear on this point but the evidence was such that the jury, if they did not find that the appellant committed an innocent mistake, must have found an intent to defraud.

A question of procedure arose in the course of the trial. After this had proceeded for a day one of the jurors wanted to make a communication to the Judge. The learned Judge retired to his chambers with the jury in the absence of counsel and of the appellant. The communication related merely to the qualification of the juror, who was not a British subject, and of the form of the oath that this juror had taken. The hearing was resumed and the learned Judge announced the gist of what had taken place in his chambers, but did not mention one detail, viz. that the juror used the word "your" instead of "our". We regard this as immaterial, there being no statutory form of oath for jurors, but we also think that this should have been announced in Court. As the discussion in chambers did not touch on the issues of the trial we do not consider that it can invalidate the proceedings. We consider, however, that there was no reason for retiring into chambers and that on general principles such a step is undesirable.

The appeal is dismissed.

Appeal dismissed.

Solicitors for the appellant: *L. Rayner & Co.*